

- The Commission should revise its proposed definition for major CMRS modifications in the following respects:
- First, the Part 22 criteria are irrelevant for area-licensed services such as cellular PCS, regional and national paging, and nationwide 220 MHz. The Commission should propose a different set of criteria for these services. (20)
- Use of a 2-kilometer radius (or the 1.6/2.6 kilometer radius) to determine when an application is a license modification is too small and may work a hardship on small businesses that cannot maintain the necessary distance. (20-21)
- In view of the above, the Commission should use a distance roughly twice the expected reliable service contour for a base station licensed at maximum height and power as the maximum distance under which a new application is deemed to be modifying an existing license. (20-21)
- Major-amendment and license-modification criteria should differ in the context of wide-area systems. For amendments, the Commission should use a relocation distance of 2 or 2.6 kilometers; for modifications, which will appear on public notice, the Commission need only be concerned that the existing and proposed sites can be operated as an integrated system (i.e., the service contours can touch). (21)
- For two-way stations, the Commission's "same frequency" criterion (that applications proposing locations 2 kilometers or less from a previously authorized and fully operational base station licensed to the same licensee on the same frequency is not a major modification) should be relaxed to state "a frequency in the same frequency band which can be used for the same purposes." (21)
- The "same licensee" criterion is also too rigid and should be modified to cover stations that are operated by licensees under substantially common ownership or as part of an integrated system. (21-22)
- The Part 22 exceptions should all be carried forward. (22)

- The Commission should continue its existing Part 22 practice of permitting two applicants to consent to harmful electrical interference that otherwise would render their applications mutually exclusive. (23)
 - For all 220 MHz CMRS licensees that will be operating this year pursuant to an STA to satisfy their initial construction deadline, the Commission should deem both the location in the STA and that authorized in the initial license as the "authorized site" for modification purposes. (23)
 - **Conditional and special temporary authority:** As a transition matter, the Commission should continue to extend existing Part 90 STAs, even for licensees immediately classified as CMRS. (24)
 - **Transfers of control and assignments:** For 220 MHz CMRS systems, the Commission should adopt rules patterned after the existing Part 22 requirements. Specifically, the policies in 47 C.F.R. § 22.40(a) should apply to local 220 MHz systems, and those in 47 C.F.R. § 22.40(b)(1) (unserved area rules) should be applied to nationwide systems, with pro forma transfers permitted at any time. (24-25)
- Other:** Simron urges the Commission to exercise its authority to modify those 220 MHz local licenses granted after August 10, 1993, to bear an earlier grant date, so that 220 MHz licensees are consistently entitled to the three-year transition period. (25-27)

SOUTHWESTERN BELL CORPORATION

Interest: Regional Bell Operating Company and cellular and paging licensee.

Substantial similarity between services:

- Congressional intent is that all CMRS providers be treated similarly. (1)
- Instead of differentiating between CMRS providers, FCC should use the four prong test that it adopted to determine which services are CMRS (for profit, interconnected, available to the public, functionally equivalent to CMRS) and regulate all such services similarly. (1-2)
- PCS and ESMR compete with cellular services so all should be regulated similarly. (3)
- Parity in regulation does not mean that there should be technical parity for all CMRS providers. Though technical rules may differ between services, the effect should be to create a level playing field. (4)

Spectrum aggregation caps: Opposes a general CMRS spectrum cap in favor of service-specific aggregation rules. At this time, enough is known about the market to determine if this is necessary and it may have a negative effect on competition by preventing qualified competitors from entering a market. Any spectrum cap for CMRS providers should be applied to all providers, including SMR services, to avoid allowing them to have a competitive advantage. (5-8, 16)

Technical rule change proposals

- **Service area definitions/transition provisions:**
 - Opposes allowing 800 MHz SMR licensees to define their own service areas because this will give them a competitive advantage over other CMRS providers who must operate in established service areas. (9)
 - Also opposes allowing 900 MHz SMR providers to license on MTA, BTA, and nationwide bases for the same reasons as above. Supports licensing wide-area SMR on comparable bases as cellular and broadband PCS are licensed. (10)

- Supports policy that CMRS providers should be able to offer equivalent local calling areas and to be under same equal access obligations. (10)
- **Antenna height and power limits:**
 - The base station power limits for SMR and cellular providers should be the same so as to avoid giving SMRs a competitive advantage. (11)
 - All CMRS providers should be subject to the same mobile and portable power limits and recommends adoption of ANSI/IEEE standard to assure that there are no harmful effects from use of such devices. (12)
- **Interoperability:** Opposes interoperability among different classes of CMRS equipment because this will increase the size and weight of handsets and place additional strain on the battery. This would make handsets less attractive to subscribers while not providing any benefit since, so long as interconnection with the PSTN is available, interoperability is unnecessary to further communication. (13)

Licensing rules and procedures

- **Comments on new application form:**
 - On Form XX, Schedule C, items C22 and C23 are redundant and the FCC should clarify exactly what information is required. (14)
 - On Form XX, Schedule, there is an "eligibility" section requiring citation to the Rule sections and a description of activity. FCC should clarify that it only requires citation to the particular Commission Rule that requires the filing of the form and not a string cite of several rules. (14)

Other: The same eligibility restrictions to participate in PCS licensing should be imposed on SMR providers as have been imposed on cellular providers so that all services are on equal footing. This will also give SMR users the incentive to use their spectrum efficiently. (16)

SMARTLINK DEVELOPMENT LIMITED PARTNERSHIP

Interest: Corporation engaged in the research, development, manufacturing, and marketing of land mobile radio products.

Substantial similarity between services:

- Concurs with the FCC's view that, given the relatively recent licensing of the 220-222 MHz band, the fact most 220-222 MHz systems are not yet constructed, and the limited bandwidth associated with 220 MHz systems, it is unlikely that 220 licensees will offer services similar to, or competitive with, cellular or other broadband services in the near future. (3-4)
- Thus, 220-222 MHz services are not substantially similar to these other offerings, and comparable common carrier technical and operational rules should not be applied to 220 MHz operations. (3-4)

Other:

- With regard to SunCom's Petition for Declaratory Ruling, incorporated in the Further Notice, SmartLink states that, while regional 220 MHz licenses such as those proposed for Suncom, may eventually prove desirable, the "regionalization" of 220 licenses must be scrutinized on a case-by-case basis in order to prevent spectrum warehousing. (5)
- SmartLink maintains that the precedent surrounding the ESMR waiver grants is inapplicable in the context of SunCom's request for waiver because:
 - (1) the local 220 MHz marketplace is nascent and undeveloped;
 - (2) a grant of the request "as is" would restructure the 220 MHz rules to give Suncom a nationwide system without first requiring it to comply with the nationwide eligibility criteria;
 - (3) the 220 MHz rules contain procedures permitting licensees to acquire additional channels; and
 - (4) Suncom's proposed aggregation scheme could be implemented at a later date with less interruption to the 220 MHz marketplace. (6-8)
- If Suncom's request is granted, more rigorous construction requirements should be imposed. SmartLink

suggests that Suncom be required to construct at least two of every five channels in each five-channel block (40 percent of the aggregate system) by the initial construction deadline. (8)

SMR SYSTEMS, INC. ("SSI")

Interest: Part 22 licensee engaged in the provision of paging and two-way mobile service in the Houston and Austin, Texas areas.

Licensing rules and procedures:

• **Amendment of applications and license modifications:**

- SSI supports the use of the same criteria in defining major amendments and modifications among all CMRS licensees. However, SSI suggests that the Commission's specific proposals (as proposed in the Part 22 Rewrite for use in the context of 931 MHz paging) are too rigid, and should be modified as discussed below. (3)
- First, the Part 22 criteria are irrelevant for area-licensed services such as cellular, PCS, regional and national paging, and nationwide 220 MHz. The Commission should propose a different set of criteria for these services. (3)
- Use of a 2-kilometer radius (or the 1.6/2.6 kilometer radius) to determine when an application is a license modification is too small and may work a hardship on small businesses that cannot maintain the necessary distance. (4)
- In view of the above, the Commission should use a distance roughly twice the expected reliable service contour for a base station licensed at maximum height and power as the maximum distance under which a new application is deemed to be modifying an existing license. (4)
- If the Commission seeks to use a single maximum for all services, a distance of 64 kilometers (40 miles) will provide reasonable assistance to all licensees in building wide-area, site-licensed communications systems. (5)
- Major-amendment and license-modification criteria should differ in the context of wide-area systems. For amendments, the Commission should use a relocation distance of 2 or 2.6 kilometers; for modifications, which will appear on public notice, the Commission need only be concerned that the existing and proposed sites can be operated as an

integrated system (i.e., the service contours can touch). (5)

- For two-way stations, the Commission's "same frequency" criterion (that applications proposing locations 2 kilometers or less from a previously authorized and fully operational base station licensed to the same licensee on the same frequency is not a major modification) should be relaxed to state "a frequency in the same frequency band which can be used for the same purposes." (6)
- The "same licensee" criterion is also too rigid and should be modified to cover stations that are operated by licensees under substantially common ownership or as part of an integrated system. (6)
- The Part 22 exceptions should all be carried forward. (6)
- The Commission should continue its existing Part 22 practice of permitting two applicants to consent to harmful electrical interference that otherwise would render their applications mutually exclusive. (7)

Other: The Finder's Preference program should be made applicable to all CMRS licenses. (8)

THE SOUTHERN COMPANY

Interest: Wide-area 800 MHz SMR licensee.

Substantial similarity between services: Maintains that wide-area SMR and cellular look similar, but that there are many longstanding differences that must be recognized before comparable regulations can be promulgated. (5)

Spectrum aggregation caps:

- Urges the FCC to establish limits on spectrum aggregation that will maximize efficient entry by digital wide-area SMRs. (14)
- To this end, urges the FCC to augment its other limitations on spectrum aggregation (i.e., in the PCS and cellular contexts) by limiting wide-area SMRs' accumulation of frequencies that exceed the number needed to realize the benefits of scale economies. (14-16)
- Maintains that reliance on an overall 40 Mhz cap for all CMRS services risks anticompetitive effects because it incorrectly assumes that all CMRS services occupy the same market. (17-18)

Technical rule change proposals:

- **Service area definitions/transition provisions:** Due to the lack of available spectrum at 800 MHz, opposes Commission-defined service areas for wide-area SMRs. (8)
- **Co-channel interference criteria:** Urges the Commission to maintain the existing protection criteria for 800 MHz SMR licensees, noting the expense undertaken to comply with existing requirements. (9)
- **Antenna height and power limits:** Objects to any decrease in antenna height or power for 800 MHz SMRs. (10)
- **Modulation and emission requirements:** Urges the Commission to maintain existing emission mask rules for CMRS providers because these rules are dependent on service-specific factors such as bandwidth and channel spacing. (11)

Operational rule change proposals:

- **Construction periods and coverage requirements:** Urges the Commission to implement construction rules for 800

MHz SMRs similar to the Part 22 requirements, pursuant to which SMR operators would be required to provide evidence of construction such as site maps and frequency utilization plans to ensure compliance. (7-8)

- **Loading requirements:** Supports elimination as proposed. (7)
- **End user eligibility, permissible uses:** Supports the elimination of all end user requirements, and limits on permissible Part 90 communications. (10)
- **Station identification:** Encourages the FCC to allow wide-area SMRs to use a single call sign. (10)

Licensing rules and procedures:

- **Application fees:** Argues that the FCC's proposals to apply Part 22 requirements to reclassified Part 90 CMRS providers/applicants will put greater fee obligations on wide-area SMRs than on cellular. (11-12)
- **Mutually exclusive applications:**
 - Argues that site-by-site licensing warrants protecting SMR modification applications from mutually exclusive filings. (12-13)
 - For purposes of distinguishing between major and minor modifications in the wide-area SMR context, supports the proposal to treat "internal" changes (i.e., those within an SMR footprint) as minor and immune from mutually exclusive filings. (13)
- **Pre-authorization construction:** Maintains that wide-area SMRs should be able to commence construction at any time, provided that they comply with environmental and aviation hazard rules. (13)
- **License term and renewal expectancies:** Supports the proposals to extend the wide-area SMR license term to 10 years and to grant wide-area SMR operators renewal expectancy. (13)
- **Transfers of control and assignments:** Supports all CMRS licensees' ability to assign stations after construction, and urges that there is no need for a holding requirements for unserved areas. (13-14)

SPRINT CORPORATION

Interest: Interexchange and cellular carrier.

Spectrum aggregation caps: If the FCC determines that a spectrum cap is necessary, the restrictions on the amount of PCS spectrum that cellular providers can acquire in their cellular service territories must be applied equally to wide-area SMRs and any of the providers of substantially similar CMRS services. (1-5)

SUNCOM MOBILE AND DATA, INC.

Interest: Non-nationwide 220-222 MHz licensee.

Substantial similarity between services: Submits that 220-222 MHz narrowband systems are "substantially similar" to other mobile service systems and must be afforded an opportunity to compete on a level playing field. (1)

Other:

- Suncom previously filed a request for waiver of the applicable construction requirements so that it could secure an extended construction period to implement a commercial, trunked narrowband mobile radio system in approximately 75 top MSAs. SunCom also sought permission to aggregate non-nationwide 220-222 MHz five-channel blocks on a regional basis. (1-2)
- To side-step controversy, Suncom now seeks to modify its waiver request as follows:
 - Suncom proposes to shorten its construction schedule from eight to five years, with established benchmarks of 20 percent at 1.5 years, 40 percent at 2.5 years, 75 percent at 3.5 years, and 100 percent at 5 years. (3)
 - Suncom proposes to construct: (1) the lesser of three licenses (15 channels) or all of the channels under its management in each of its markets in the top MSAs, and (2) the lesser of two licenses (10 channels) or all of the channels under its management in MSAs 76 and beyond. (4)
- Suncom submits that this construction schedule is far more aggressive than that required for nationwide licensees, and is comparable to that applicable to wide-area ESMRs. (4)
- Suncom estimates that it will be successful in contracting to construct and manage 500 5-channel base stations and will spend roughly \$10-15 million in capital investments in the first 18 months. (4)
- Suncom proposes to limit its ability to assign its network authorization until the 20 percent benchmark has been met.

TRW INC.

Interest: Applicant for authority to construct a Low-Earth Orbit Mobile Satellite Service System.

Substantial similarity between services:

- Urges the Commission to avoid classifying mobile space segment operators as CMRS providers. (1)

Spectrum aggregation caps:

- Asserts that mobile space station licensees should not be subject to the proposed spectrum caps. (1)
- Believes that spectrum caps should not be implemented for any service, particularly emerging mobile services. (1)
- Views current limitations sufficient to ensure competitive mobile services are universally available. (1-2)
- The record does not support the conclusion that artificial barriers, such as spectrum caps, are needed or that they will ensure a competitive marketplace. (2)
- Argues that concerns about "spectrum hogging" do not apply to satellite operators sharing only 33 MHz of bandwidth globally. (2)
- Supports the current practice of allowing the marketplace to self-manage access to the spectrum. (3)

UNITED STATES SUGAR CORPORATION

Interest: Operator of SMR system used for internal communications.

Substantial similarity between services:

- As small SMR systems are not comparable to cellular, PCS, or EMSR systems, they should be removed from the new regulatory category and continue to be regulated as PMRS providers after August 10, 1996. (7)
- Substantial similarity should be determined by reference to a system's geographical coverage, system architecture, user and service characteristics, and future service plans. (8-9)

Spectrum aggregation caps:

- Regardless of whether a spectrum cap is adopted for multi-channel, wide-area CMRS, separate attribution standards should be adopted for small CMRS providers to ensure fair regulatory treatment commensurate with their character. (14)

Technical rule change proposals:

- **Channel assignment rules:** Should retain existing channel assignment rules for traditional SMR systems and establish an alternative mechanism for licensees who wish to provide multi-channel, wide-area service. (10-11)
- **Antenna height and power limits:** Opposes the proposal for conformity as the costs of equipment modification and antenna reinstallation for small CMRS providers would be expensive and provide no commensurate economic gain. (12)
- **Modulation and emission requirements:** As lowering the standard to the acceptable level for cellular providers would jeopardize the integrity of SMR and other PMRS systems operating in the 800 MHz band, regulatory symmetry should not be sought here. (11)
- **Interoperability:** As most of the service provided by traditional SMR systems is for dispatch, an interoperability requirement would have no bearing on competition and would impose economic burdens on small CMRS providers. (13)

Operational rule change proposals

- **Permissible uses:** Opposes the proposal to eliminate/conform user eligibility restrictions as the limited number of channels and limited scope of available service provided by traditional SMR systems makes it impossible to serve all users who make reasonable requests for carriage. (13-14)

US MOBILCOMM, INC.

Interest: Operator and/or marketer of cable television, SMRs, cellular and broadcast television systems.

Other:

- FCC should create a reasonably rapid phased-in construction schedule for 220 MHz network systems. Forcing an entire network to be operational by Dec. 2, 1994, is too burdensome on network managers. (7-8)
- FCC should also adopt a phased in construction plan for commercial 220 MHz local licensees planning to be part of a regional network. The 8-year period proposed by SunCom does not come near meeting the regulatory objective of making 220 MHz service available on a speedy basis. SunCom's construction schedule would undermine desire of manufacturers to participate in the market, lead to an increase in spectrum warehousing, and require no completion of any portion of its network by Dec. 2, 1994 deadline (8)
- Proposes that Commission grant 220 MHz regional networks until Dec. 2, 1996 to complete a phased-in construction schedule, with specific dates for partial completion. (9-10)
- Should allow current licensees to modify their systems before accepting new 220 MHz applications. Because of the judicial appeal of 220 MHz licensing procedures, construction has been so delayed that many base station locations applied for are unavailable or economically unfeasible for 220 MHz systems. The Commission should maintain its freeze on new applications and accept modification applications from current licensees for a brief period of time, to allow current licensees to improve their facilities without the threat of a mutually exclusive application being filed by a new party. This will prevent canceling original licenses and shutting down existing facilities where operators have invested in construction and are providing service to the public. (11-12)
- In the cases where the Commission is unable to grant an application for permanent modification due to various technical reasons, it should return the application and allow the applicant 60 days to

bring the modification into compliance with
Commission rules. (13)

- Should encourage and enhance ability of 220 MHz licensees to join regional networks since such networks are necessary for such services to be competitive in the land mobile communications marketplace. (6)
- Should clarify that §90.739 does not prohibit an entity from acquiring multiple systems within 40 miles of each other provided that prior to any such acquisition, each of the systems is fully operational and is committed to being a part of a regional network. This will not promote warehousing but rather will encourage utilization of the spectrum. (6-7)

U S WEST

Interest: Regional Bell Operating Company.

Substantial similarity between services:

- All broadband CMRS offerings are substantially similar, since all are designed to meet the needs of customers that cannot be satisfied by traditional wireline services and are reasonably interchangeable for that purpose. (3-5)
- Narrowband and broadband CMRS offerings do not appear to be substantially similar. (3 n.7)

Technical rule change proposals:

- The FCC does not need to overhaul the technical rules for each service in this proceeding; these rules have evolved over time to address the unique technical characteristics for each service. (5-7)
- Urges the FCC only to undertake rule changes that are practical at this time and make other decisions on a reasoned, unhurried basis. (8)

Operational rule change proposals:

- Technical complexities do not arise with respect to operational rules and the FCC should apply the least restrictive operational rules uniformly to all CMRS providers. (5, 8-9)
- **Construction periods and coverage requirements:** Argues that rules should be uniform. (8)
- **Permissible uses:** Argues that restrictions should be eliminated across the board. (9)
- **Station identification:** Argues rules should be standardized. (9)
- **General licensee obligations:** Argues rules should be standardized. (9)
- **Equal employment opportunities:** Argues rules should be standardized. (9)
- **Transfers of control and assignments:** Argues that the FCC should not restrict after-market transfers of CMRS licenses acquired through competitive bidding. (9-10)

UTILITIES TELECOMMUNICATIONS COUNCIL

Interest: National representative on communications matters for electric, gas, water and stream utilities, and natural gas pipelines.

Creating comparable regulatory requirements:

- Regulatory parity does not mean that all CMRS providers must be treated identically. The Commission must bear in mind as it formulates new rules for reclassified PMRS entities the impact of its actions on the existing PMRS environment. (2-3)
- The frequencies and technical and operational requirements of a number of reclassified PMRS categories are so inextricably intertwined with remaining PMRS operations that the FCC must be careful to avoid negatively impacting PMRS users. (3)

Technical rule change proposals:

- **Channel assignment rules:** Opposes any proposal to limit shared nature of the Business Radio Frequencies below 470 MHz, particularly in light of the fact that the likelihood of widespread Business Radio CMRS operations is doubtful. (3-4)
- **Co-channel interference criteria:** Urges the Commission not to modify the co-channel interference criteria for CMRS SMR providers that operate co-channel to utilities, pipelines, and other PMRS users. (3)

Operational rule change proposals:

- **Permissible uses:** Argues that it would be unwise to eliminate the Part 90 limitation on the duration of messages for Part 90 CMRS providers operating on shared channels, as the rule helps assure maximum availability of air-time by all co-channel licensees. (4)

Licensing rules and procedures:

- **Comments on new application form:**
 - Argues that the proposed Form 600 is cumbersome and likely to cause confusion among PMRS applicants, and urges the FCC to package the form so as to clarify which schedules should be used by each type of applicant. (5)

- PMRS licensees should provide geographic coordinates regarding control stations and areas of operation. (5)

VANGUARD CELLULAR SYSTEMS, INC.

Interest: Cellular carrier.

Substantial similarity between services:

- Agrees that the focus should be on services provided to end users and the extent services meet similar needs and demands, since this ultimately concentrates on whether services offer essentially similar capabilities. (2-5)
- Agrees that cellular and wide-area SMRs are substantially similar, but argues that cellular and traditional SMRs offering vehicular-mounted or portable voice and/or data mobile communications are substantially similar. (2, 5-7)
- Agrees that PCPs and RCCs are substantially similar. (7-8)

Creating comparable regulatory requirements:

- In fashioning comparable regulations, the FCC should focus on differences leading to arbitrary and inconsistent treatment of similar services and the effect on future competition. (9-10)
- In harmonizing the Part 22/90 rules into a new Part 20, the FCC should flexibly use both Part 22 and Part 90 rules as appropriate and agrees that attempting to merge the sections for all purposes is premature. (10-11)

Spectrum aggregation caps:

- Does not oppose a spectrum cap, but believes a 50 MHz cap is more appropriate since a lot of new spectrum is being made available, there is no evidence of anticompetitive behavior, and the 40 MHz proposal appears arbitrary. (11-14)

WJG MARITEL CORPORATION

Interests: Provider of public coast station services.

Substantial similarity between services:

- Cellular and public coast station services are substantially similar, but cellular services are less heavily regulated and thus have a competitive advantage. (1-3)

Technical rules change proposals:

- Service area definitions/transition provisions: FCC should license public coast station services in the same way as cellular services, with large contiguous spectrum blocks. (2-4)

Operational rule change proposals:

- Loading requirements: Requirements should be deleted for public coast station services because they prevent such services from being competitive with cellular and ESMR providers, with no corresponding public benefits. (6-7)
- Permissible uses: FCC should allow public coast station service providers to provide land mobile service without any time restrictions and without obtaining a waiver, subject to the understanding that maritime traffic must take priority over land-based communications. This will allow public coast station service providers to engage in revenue producing activity all year, and spread costs of maintaining infrastructure and introducing technology over a larger customer base. (7-8)

Licensing rules and procedures:

- Regulatory fees: Requests that Commission to adopt rules to defining "subscriber" and the fees assessed on a basis that will not present burdensome fees for occasional or infrequent users of public coast station service. Not requiring public coast station service providers to pay fees based on provision of service to any vessel that uses its system on an itinerant basis is consistent with cellular licensees not being required to pay fees based on provision of services to roamers. (9)
- License term and renewal expectancies: Supports adoption of similar provisions for renewal expectancy (as in Part 22) for all CMRS services. This will: give

public coast station service providers the same renewal expectancy as cellular providers and prevent a renewal applicant from being forced to discontinue operations because of a less qualified initial applicant. (9-10)

Other:

- Automatic interconnection prohibition for public coast station services should be eliminated. (5-6)